insolvency and the failure to pay antecedent debts owed to the seller does not privilege him to repudiate the contract, is undoubtedly correct.

SPECIFIC PERFORMANCE—FRAUDULENT MISREPRESENTATIONS OF VENDOR NO BAR.—The defendant, a purchaser of three tracts of oil land, having discovered that the vendor had overstated the production of the wells on the second tract, obtained a change in the contract extending the time of payment for one year. Subsequently the defendant discovered that the wells on the first tract were totally non-productive, and therefore refused to pay the balance due. The vendor sued for specific performance. *Held;* that specific performance should be granted. *Clark v. Wheatley* (1922, C. C. A. 6th) 281 Fed. 55.

At first sight the decision seems contrary to the rule that "actual fraud, in any of its phases, ... will *a fortiori* defeat the remedy of specific performance." Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 889. Nevertheless the conclusion of the court is correct and in accord with the weight of authority. The reasoning chiefly relied upon, however—that the defendant, knowing of the fraud as to one tract at the time of the "accord and satisfaction" should have known that he was being deceived as to the other tracts—seems unsound. There are four possible remedies for the parties where, in a case of this type, one fraudulently takes advantage of the other's lack of vigilance. The court admits that if the now defendant sued in deceit at law the question of his diligence in discovering the fraud would be of no moment. See *Pryor v. Foster* (1891) 130 N. Y. 171, 29 N. E. 123. There is a conflict as to the effect of the defendant's negligence where the plaintiff sues him for breach of contract, but there, too, "the better view . . . . is . . . . to deny him . . . . the privilege of excusing his own misconduct by the stupidity or credulity of the defrauded party." 3 Williston, *Contracts* (1920) sec. 1516. In equitable actions, even where the negligent plaintiff sues for affirmative relief (rescission), "the modern tendency is certainly toward the doctrine that negligence in trusting to a misrepresentation will not . . . . deprive the defrauded person of his remedy." 3 Williston, *op. cit.* sec. 1516; see *Campbell v. Fleming* (1834, K. B.) 1 Adol. & El. 40 (further fraud discovered after new agreement); Fry, *Specific Performance* (6th ed. 1921) sec. 741. Certainly then, where the wrongdoer sues to compel specific performance, as in the instant case, it is indeed remarkable for equity to aid a knave because his victim was a fool. See *Reynell v. Sprye* (1852, Ch.) 1 DeGex, M. & G. 658, 709; *Mather v. Barnes* (1906, C. C. W. D. Pa.) 146 Fed. 1000. And it seems that the defendant's delay in bringing suit for affirmative relief, after discovering the additional fraud, should not clean the plaintiff's hands when he asks the aid of a court of equity. But the reason, mentioned only incidentally by the court, that no damage resulted to the defendant from the fraud because the transaction as a whole was profitable, is the one on which the case can best be sustained, since this is usually held to vitiate the fraud as a defense both at law and in equity. Pomeroy, *op. cit.* sec. 898. However, there is a strong dictum that if the plaintiff is fraudulent, damage to the defendant is not necessary to enable him to resist specific performance. *Kelly v. Ry.* (1888) 74 Calif. 557, 16 Pac. 386. Connecticut has gone so far as to give the defrauded person the remedy of rescission—*a fortiori,* it is likely that fraud without damage would be a defense in that jurisdiction to a suit for specific performance. *Morrow v. Ursini* (1921) 96 Conn. 219, 113 Atl. 388. This rule, although both logical and just, is still in the hopeless minority; the overwhelming majority is with the instant case.